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Rosemarie Medina Rosemarie Medina

11-07-2001

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ATTY. DOCKET NO. ATI-4.2.099/3402

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

APPLICANT : ATICO INTERNATIONAL USA INC.
MARK : SUPER ALKALINE
SERIAL NO. : 76/045,182
FILING DATE : May 10, 2000

Commissioner for Trademarks
BOX TTAB NO FEE
2900 Crystal Drive
Arlington, VA 22202-3513

APPLICANT'S APPEAL BRIEF

Applicant Atico International USA Inc. ("Atico), respectfully submits this memorandum in support of its appeal of the Examining Attorney's refusal to register the proposed mark SUPER ALKALINE, pursuant to 15 U.S.C. § 1052(e)(1), because the mark is merely descriptive of the goods. As the Examining Attorney misapplied the relevant case law and also improperly concluded that the mark is descriptive because it contains the laudatory formative SUPER, the refusal to register should be reversed.

I. BACKGROUND RELEVANT TO THE INSTANT APPEAL

On May 10, 2000, Atico filed an Intent-to-Use application for the proposed mark SUPER ALKALINE, to be used in connection with batteries in International Class 009. The application was assigned to Examining Attorney, James M. Marcus, who issued a first Office Action dated November 3, 2000 (the "First Office Action"). There, the Examining Attorney refused registration under 15 U.S.C. § 1052(e)(1), stating that Atico's proposed mark merely described the goods. According to the Examining Attorney, "[t]he word 'super' is laudatory because it attributes a quality to the goods and is equivalent to other descriptive terms." (First Office Action at 2). In support of the refusal to register, the Examining Attorney referred to attached materials showing, *inter alia*, three (3) registrations for marks incorporating the formative SUPER (including two – SUPER ENERGY +, Reg. No. 2270106, and EVEREADY SUPER HEAVY DUTY BATTERY, Reg. No. 1244281 – for batteries in International Class 9). The Examining Attorney also attached materials showing, *inter alia*, three (3) registrations incorporating the formative ALKALINE for batteries in International Class 9.¹ In the case of the SUPER battery registrations, the owner was required to disclaim the exclusive right to use

¹ ALKALINE PLUS, Reg. No. 2360238; ULTRA ALKALINE, Reg. No. 2385890 (filed as ITU); EVEREADY ENERGIZER ALKALINE, Reg. No. 1214733.

SUPER or SUPER HEAVY DUTY BATTERY apart from the mark as shown. In the case of the ALKALINE battery registrations, the owner was required to disclaim the exclusive right to use ALKALINE apart from the mark as shown.

The Examining Attorney alternatively refused registration under § 1052(e)(1) because the proposed mark is deceptively misdescriptive of the goods, to the extent that “the goods do not contain a carbonate or hydroxide of alkali metal.” (*Id.*).

Atico filed a response to the Office Action on or about March 20, 2001. (*See* Exhibit A, attached). In connection therewith, Atico attempted to traverse the descriptiveness refusal to register, noting that the Trademark Office already has registered three (3) marks containing the formative ALKALINE for batteries,² as well as the included registrations containing the formative SUPER, and that in each case, the Trademark Office merely required a disclaimer of the relevant term. (*Id.* at 2). Atico argued that its use of the formative SUPER in the proposed mark SUPER ALKALINE was no more laudatory than the use of the formative ULTRA in the registered mark ULTRA ALKALINE. (*Id.*).

Atico further contended that a term’s being laudatory, in itself, is insufficient to refuse registration on the basis of descriptiveness, citing *In re Bush Bros. & Co.*, 884 F.2d 569, 572 (Fed. Cir. 1989); *In re Ralston Purina Co.*, 191 USPQ 237, 238 (TTAB 1976) (authorizing registration of RALSTON SUPER SLUSH on the Principal Register because SUPER is used “merely to connote a vaguely desirable characteristic or quality allegedly connected with the product”, not to describe any real characteristic or quality); and *In re Occidental Petroleum Corp.*, 167 USPQ 128 (TTAB 1970) (authorizing registration on the Principal Register of

² ULTRA ALKALINE (Reg. No. 2385890), ALKALINE PLUS (Reg. No. 2360238), and PLUS ALKALINE (Reg. No. 2177528).

SUPER IRON for soil supplements, reversing the examiner's holding that "super" merely describes a quality of the goods).

In response to the alternative basis for refusal to register, Atico proffered evidence that the identified goods contain such a carbonate or hydroxide.

By Office Action dated August 10, 2001 and designated FINAL (Final Office Action), the Examining Attorney maintained his refusal to register the proposed mark in connection with the intended goods, "because the subject matter for which registration is sought is merely descriptive of the identified goods." (Final Office Action at 1). The Examining Attorney claimed to have considered the arguments presented in Atico's response to the First Office Action, "but has found them unpersuasive." (*Id.*).

According to the Examining Attorney:

The word "super" refers to an article of superior quality and the word "alkaline" refers to something that contains carbonate or hydroxide of an alkali metal. To the extent that the goods contain a carbonate or hydroxide of an alkali metal that is used when exceptional power is required, the proposed mark immediately conveys the nature of the goods...

Moreover, the word "super" is laudatory because it attributes a quality to the goods and is equivalent to other descriptive terms under Trademark Act Section 2(e)(10, 15 U.S.C. Section 1052(e)(1)...

* * *

The term "super" means excellent or first rate. Therefore, the term is laudatory because it attributes excellence to the applicant's goods...

Furthermore, one of the primary reasons for Section 2(e)(1) is that "no one seller should be allowed the exclusive right to describe a product by its primary characteristic, and thus preempt or limit competitors' use of the term to describe their own products." Allowing the applicant the exclusive right to use the wording SUPER ALKALINE would deny the competition the right to

describe their products as containing “super alkaline.”

(*Id.* at 2-3, *cit. omit.*, *quot. omit.*)

Atico filed its Notice of Appeal on October 4, 2001.

II. THE PROPOSED MARK IS NOT MERELY DESCRIPTIVE

A. Laudatory Terms are Not Per Se Unregistrable

The Examining Attorney’s argument concerning the unregistrability of marks incorporating laudatory terms is contrary to law. It is settled that a term’s being “laudatory” is, in itself, insufficient to refuse registration on the basis of descriptiveness. *See, e.g., In re Bush Bros. & Co.*, 884 F.2d 569, 572 (Fed. Cir. 1989); *In re Ralston Purina Co.*, 191 USPQ 237, 238 (TTAB 1976) (authorizing registration of RALSTON SUPER SLUSH on the Principal Register because SUPER is used “merely to connote a vaguely desirable characteristic or quality allegedly connected with the product”, not to describe any real characteristic or quality); *In re Occidental Petroleum Corp.*, 167 USPQ 128 (TTAB 1970) (authorizing registration on the Principal Register of SUPER IRON for soil supplements, reversing the examiner’s holding that “super” merely describes a quality of the goods).

The United States Court of Appeals for the Federal Circuit has expressly stated that “laudation does not *per se* prevent a mark from being registrable.” *In re Boston Beer Co. Ltd. Partnership*, 198 F.3d 1370, 1373, 53 U.S.P.Q.2d 1056 (Fed. Cir. 1999) (noting “an assortment of generally laudatory terms that serve as trademarks.”). *See also, In re Bush Bros. & Co.*, 884 F.2d 569, 572 12 U.S.P.Q.2d 1058 (Fed. Cir. 1989) (“laudation is not inimical to a term’s capability of functioning as a trademark”), *citing Ralston Purina Co., supra, Occidental Petroleum Corp., supra*. Specifically with respect to the formative SUPER, at least one Court of Appeals has found that the term is generally deemed suggestive. *See, Estee Lauder Inc. v. The*

Gap, Inc., 108 F.3d 1503, 1509, 42 U.S.P.Q.2d 1228 (2d Cir. 1997).

B. The Examining Attorney's Cases are Distinguishable

Cases cited by the Examining Attorney where the formative SUPER was found laudatorily descriptive, are distinguishable. In *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995), registration of the proposed mark SUPER BUY was refused in connection with tobacco products. The Board affirmed the refusal, finding that:

[T]he expression "SUPER BUY," when used in connection with cigars, pipe tobacco, chewing tobacco and snuff, is laudatory and merely descriptive of such products because, as observed by the Examining Attorney, "it ascribes a quality of superior value to the goods." In this regard, we judicially notice that The Random House Dictionary of the English Language [] defines "super" as an adjective meaning, inter alia, "of the highest degree, power, etc. [;] . . . of an extreme or excessive degree [;] . . . Informal. very good; first-rate; excellent [;] . . . superfine" and [] lists "buy" as a noun signifying, among other things, "something bought or to be bought; purchase . . . a bargain [. . .]." . . .

Although, as stated in *Ralston Purina*, [] "the term 'SUPER' has been held to be both descriptive and suggestive," depending upon the context in which it is used, we believe that combining such term with the word "BUY" to form the expression "SUPER BUY" results in an expression of preeminence, analogous to a grade designation, which is indicative of superior value for applicant's goods. . . The expression, "SUPER BUY," as applied to certain tobacco products which, applicant admits, are known to the trade and consuming public to form "a plethora of price-value brands," would immediately describe to such purchasers, without the need for any imagination, conjecture or speculation, that applicant's tobacco products are an exceptionally high value for their price. The words "SUPER" and "BUY," when joined to form the compound "SUPER BUY," have a meaning identical to the meaning which ordinary usage would ascribe to those words in combination.

Consolidated Cigar, 35 USPQ2d at 1293-4, *cit. omit.*, *quot. omit.*

Crucial to the Board's decision were excerpts from a particular database:

demonstrat[ing] that the expression "SUPER BUY" "has been

widely adopted in common language as referring to bargains of exceptional note” and is used “in describing or identifying high value or worth in certain goods and services.” Consequently, and especially to those consumers who are price-value oriented, the expression “SUPER BUY” conveys forthwith that in the segment of the marketplace in which applicant's goods would be sold, its cigars, pipe tobacco, chewing tobacco and snuff are of a superior value in relation to comparable goods. As such, “SUPER BUY” is a laudatory expression which is merely descriptive of applicant's goods.

Id. at 1294, *cit. omit.*

There are no such excerpts or other evidence here. The First Office Action includes nothing demonstrating a trade/public use of the phrase SUPER ALKALINE. Search results from the YAHOO! and GOOGLE search engines, included with the Final Office Action, are at best equivocal as to whether the phrase has a descriptive meaning understood to the trade and the public, or alternatively, whether it is used as a particular brand identifier. Accordingly, *Consolidated Cigar* is neither dispositive nor persuasive here.

In re Carter-Wallace, Inc., 222 USPQ 729 (TTAB 1984) affirmed the refusal to register the proposed mark SUPER GEL, for lathering gel for shaving, under 15 U.S.C. § 1052(e)(1).

According to the Board there:

The more difficult issue to decide is whether the combination of the word “SUPER” with the word “GEL” creates a mark that, when applied to applicant’s goods, is merely descriptive. We start (as we have in other cases involving the registration of marks incorporating the word “SUPER”) with the definition of “SUPER” in Webster's Third New International Dictionary []:

4a: a superfine or superior grade or quality: an extra large size
b: an article of merchandise of a superfine grade, quality, or large size.

We find that the combination of the word “SUPER” with the word “GEL,” an apt descriptive name for applicant’s goods, results in a term that would be perceived as nothing more than the

name of the goods modified by a laudatory adjective indicating the superior quality of applicant's shaving gel.

Carter-Wallace, Inc., 22 USPQ at 730, *cit. omit.* The Board in *Carter-Wallace* then expressly distinguished its circumstances from those in *Occidental Petroleum Corp.*, saying:

In that case, the Board reversed the refusal to register the mark "SUPER IRON" for a soil supplement. The Board found that "SUPER IRON" did not merely describe soil supplements but, instead, only suggested that the iron in applicant's soil supplement was in larger proportion than would ordinarily be expected in such goods or that the iron in applicant's soil supplement was of a superior grade to that ordinarily found in such supplements. The Board in *Occidental* was careful to distinguish between the case with which they were presented and the case in which "SUPER" is combined with the name of an applicant's goods. *See also In re Ralston Purina Co.*, 191 USPQ 237 (TTAB 1976) [RALSTON SUPER SLUSH", with "SLUSH" disclaimed, allowed registration without a disclaimer of "SUPER" for a concentrate used to make a slush type soft drink].

Id.

The above distinction is precisely applicable here. As in *Occidental Petroleum Corp.*, Atico's proposed mark SUPER ALKALINE does not merely describe batteries, but rather, only suggests that Atico's batteries are more powerful than, or are of a superior grade to, ordinary batteries. Just as SUPER IRON was found registrable, then, so should the proposed mark here.

Quaker State Oil Refining Corp. v. Quaker Oil Corp., 172 USPQ 361 (CCPA 1972) affirmed a Board decision sustaining a notice of opposition against an application to register the mark SUPER BLEND for motor oil, under 15 U.S.C. § 1052(f). Specifically, Quaker Oil, the opposing party, asserted that it had used the phrase SUPER BLEND as descriptive term in its advertising of motor oil, that the phrase was not distinctive of applicant's product, and that it should be entitled to continue to use the phrase as an indicator of grade. 172 USPQ at 362. The CCPA, identifying the "threshold issue" as "whether . . . the term SUPER BLEND is merely

descriptive,” *id.* at 363, noted that the goods of the parties consist of multi-viscosity oils constituting a blend of two or more oils. According to the CCPA, “[w]hen the term SUPER BLEND is, as here, applied to the product, the conclusion is inescapable that the product is an allegedly superior blend of oils.” *Id.*, *cit. omit.* The conclusion of mere descriptiveness was bolstered by the fact that the applicant there had sought to register the mark on the Supplemental Register, which, per the CCPA, constituted an admission that the mark was merely descriptive of the identified goods. *Id.*

By contrast, Atico has not sought to register the proposed mark SUPER ALKALINE on the Supplemental Register, nor is there any “inescapable” conclusion that the identified goods are batteries with “an allegedly superior” alkaline quality. Indeed, from the proposed mark and the identification of goods, it is impossible to state with any certainty just what aspect of Atico’s batteries is SUPER. At least some sort of leap of imagination is required to get from the mark to the goods. The mark, therefore, is clearly suggestive, and not merely descriptive.

C. The Proposed Mark is No More Descriptive Than Numerous Registered SUPER Marks

Also, the Examining Attorney misperceived Atico’s argument against descriptiveness. Atico did not contend that the formative SUPER is not laudatory. Rather, Atico cited to the following current federal registrations for marks incorporating the formative ALKALINE in combination with a facially laudatory formative, in connection with batteries:

- Reg. No. 2360238, for ALKALINE PLUS, for batteries (International Class 9), is owned by Matsushita Electric Corporation of America, of Secaucus NJ.
- Reg. No. 2385890, for ULTRA ALKALINE, for batteries (International Class 9), is owned by Battery Pack of America, Inc., of Durham NC.
- Reg. No. 2177528, for PLUS ALKALINE, for batteries (International

Class 9), is owned by Matsushita Electric Corporation of America, of Secaucus NJ.

Atico further notes (in addition to previously cited marks) the following cancelled and current federal registrations for marks incorporating the formative SUPER in combination with a formative arguably descriptive of a characteristic of the identified goods, in connection with batteries:

- Reg. No. 2296822, for SUPERGEL, for electric storage batteries (International Class 9), is owned by Trojan Battery Company, of Santa Fe Springs CA.
- Reg. No. 2250889, for SUPERCELL, for electric batteries (International Class 9), is owned by Gold Peak Industries (Holdings) Limited, of Hong Kong.
- Reg. No. 2277070, for SUPER ENERGY PLUS (stylized letters), for dry cell batteries sold at retail excluding batteries used in motor vehicles and batteries used in computers (International Class 9), is owned by Atico International USA, Inc., of Ft. Lauderdale FL.
- Reg. No. 1347534, for SUPERPOWER, for electrical batteries (International Class 9), is owned by Marathon Manufacturing Company, of Houston TX.
- Cancelled Reg. No. 1338996, for SUPERCELL, for electric batteries (International Class 9), was owned by GPI International, Limited, of Hong Kong.
- Cancelled Reg. No. 1093472, for SUPERCELL (words and design), for electric batteries (International Class 9), was owned by Gold Peak Industries, Ltd., of Kowloon, Hong Kong.
- Ser. No. 76-037821, for SUPERPOLYMER, for batteries and chargers for notebook computer batteries (International Class 9), was filed on behalf of Electrofuel, Inc., of Toronto, Ontario, Canada. The application has been passed by the Examining Attorney.
- Reg. No. 2377788, for SUPERGARD (stylized letters), for batteries (International Class 9), is owned by STC Corporation, of Seoul, Republic of Korea.

- Reg. No. 2287640, for SUPER START (words and design), for batteries for land vehicles (International Class 9), is owned by O'Reilly Automotive, Inc., dba O'Reilly Auto Parts, Inc., of Springfield MO.
- Reg. No. 2263100, for SUPER START, for batteries for land vehicles and batteries for marine use (International Class 9), is owned by O'Reilly Automotive, Inc., dba O'Reilly Auto Parts, Inc., of Springfield MO.
- Reg. No. 2317786, for SUPERCHARGERS BY SMC (words and design), for rechargeable cellular phones batteries and automobile cigarette lighter charging adapters, plus camcorder and computer batteries and chargers (International Class 9), is owned by Strategic Marketing Concepts, Incorporated, of Newton NJ.
- Reg. No. 2276824, for SUPERCHARGER (stylized letters), for battery charger for use with batteries that power electric wheelchairs (International Class 9), is owned by National Power Chair, Incorporated, of Mound MN.
- Reg. No. 1976603, for SUPERSMART BATTERY CHARGER (stylized letters), for battery chargers for use in marine, automotive, recreational vehicle, motorcycle, and tractor equipment (International Class 9), is owned by Deltona Transformer Corporation, of Deland FL.

Clearly, the Trademark Office has determined that the use of a facially laudatory formative in combination with the formative ALKALINE, for use in connection with batteries, is not merely descriptive of the identified goods. Just as clearly, the Trademark Office has determined that use of the facially laudatory formative SUPER in combination with a formative arguably descriptive of a characteristic of the goods, for use in connection with batteries, also is not merely descriptive of the identified goods. While the Board has consistently held that third-party registrations are not conclusive on the issue of descriptiveness, *see, e.g., In re Scholastic Testing Service, Inc.*, 196 USPQ 517, 519 (T.T.A.B. 1977), such registrations, particularly in the large numbers present here for highly similar or identical goods, are at least persuasive. By the

same reasoning that led to the registration of the above SUPER battery marks, then, the proposed mark SUPER ALKALINE – certainly less baldly descriptive than the registered marks SUPERCELL or SUPERPOWER or SUPERCHARGER -- is not merely descriptive of the intended goods. Accordingly, the refusal to register the proposed mark SUPER ALKALINE under 15 U.S.C. § 1052(e)(1), as merely descriptive, was improper and should be reversed.

III. CONCLUSION

The Examining Attorney's refusal to register Atico's proposed mark SUPER ALKALINE is contrary to the controlling law, and is countered by the large number of registered SUPER marks for highly similar or identical goods. Accordingly, based on the foregoing, the refusal to register the proposed mark SUPER ALKALINE for batteries, should be reversed.

Respectfully submitted,
Atico International USA Inc.

Date: November 7, 2001



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CERTIFICATE OF MAILING

I hereby certify that this paper and every paper referred to therein as being enclosed is being deposited with the U.S. Postal Service as first class mail, postage prepaid, in an envelope addressed to Box Response - No Fee, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on March 20, 2001 (Date of Deposit)

Rosemarie Medina
Name

Rosemarie Medina
Signature

ATTY. DOCKET NO. ATI-4.2.099/3402

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : ATICO INTERNATIONAL USA INC.
MARK : SUPER ALKALINE
SERIAL NO. : 76/045,182
FILING DATE : May 10, 2000
Law Office : 109
Examining Attorney : James M. Marcus

Assistant Commissioner for Trademarks
Box Response - NO FEE
2900 Crystal Drive
Arlington, VA 22202-3513

RESPONSE TO OFFICE ACTION

Sir:

Applicant responds to the Office Action dated November 3, 2000 as follows:

REQUEST FOR INFORMATION

Pursuant to 37 C.F.R. § 2.61(b), and in accordance with the instructions of the Examining Attorney, Applicant submits herewith product information for the goods identified in the Identification of Goods, viz., batteries. The product information is in the form of advertising and photocopies of the packaging for the intended goods.

DECLARANT'S NAME REQUESTED

Pursuant to 37 C.F.R. § 2.61(b), and in accordance with the instructions of the Examining Attorney, Applicant provides the following printed form of the declarant's name:

Martin Sutker, Vice President.

REMARKS

Reconsideration of the application is requested. Applicant has provided the requested product information, and further has provided a printed form of the declarant's name, in accordance with the instructions of the Examining Attorney.

Descriptive

The Examining Attorney refused registration under 15. U.S.C. § 1052(e)(1), stating that Applicant's mark merely describes the goods. According to the Examining Attorney, "[t]he word 'super' is laudatory because it attributes a quality to the goods and is equivalent to other descriptive terms." (Office Action at 2). This refusal is respectfully traversed.

As noted by materials provided with the instant Office Action, the Trademark Office has registered the following marks containing the formative ALKALINE, for batteries: ULTRA ALKALINE, ALKALINE PLUS, and PLUS ALKALINE.¹ For each registration, the Trademark Office merely required that registrant disclaim exclusive right to use the word ALKALINE apart from the mark as shown. (With respect to those included registrations including the formative SUPER, Applicant notes that, similarly, registrants were required merely to disclaim the word SUPER apart from the mark as shown.) Applicant submits that its use of the formative SUPER is no more laudatory than the formative ULTRA in the registered mark ULTRA ALKALINE. Yet the Trademark Office found ULTRA ALKALINE not merely descriptive of the goods. By the same token, Applicant's SUPER ALKALINE mark should also be deemed not merely descriptive.

Moreover, that a term is "laudatory" is, in itself, insufficient to refuse registration on the basis of descriptiveness. *See, e.g., In re Bush Bros. & Co.*, 884 F.2d 569, 572 (Fed. Cir. 1989); *In re*

¹ Registration Nos. 2,385,890; 2,360,238; and 2,177,528; respectively.

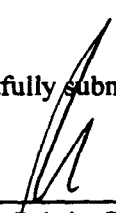
Ralston Purina Co., 191 USPQ 237, 238 (TTAB 1976) (authorizing registration of RALSTON SUPER SLUSH on the Principal Register because SUPER is used "merely to connote a vaguely desirable characteristic or quality allegedly connected with the product", not to describe any real characteristic or quality); *In re Occidental Petroleum Corp.*, 167 USPQ 128 (TTAB 1970) (authorizing registration on the Principal Register of SUPER IRON for soil supplements, reversing the examiner's holding that "super" merely describes a quality of the goods). The refusal to register Applicant's proposed mark SUPER ALKALINE on the basis that the formative SUPER is laudatory, thus is contrary to the established law and is thereby traversed.

Finally, the Examining Attorney alternatively refused registration under § 1052(e)(1) because the mark is deceptively misdescriptive of the goods, to the extent that "the goods do not contain a carbonate or hydroxide of alkali metal." (*Id.*). Applicant submits that its goods do contain such a carbonate or hydroxide, as shown by the enclosed product information. Accordingly, the alternative basis for refusal to register is traversed.

Entry and allowance is earnestly solicited.

Date: March 20, 2001

Respectfully submitted,



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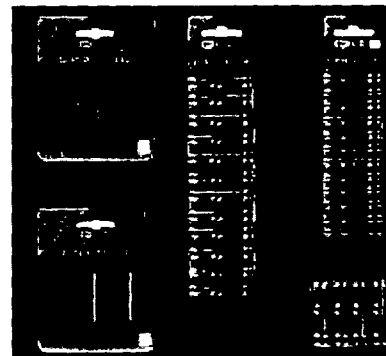
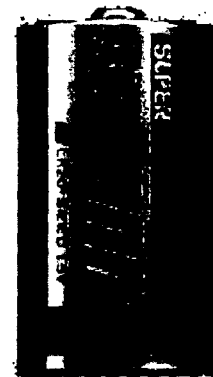


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**SUPER ALKALINE
BATTERIES**

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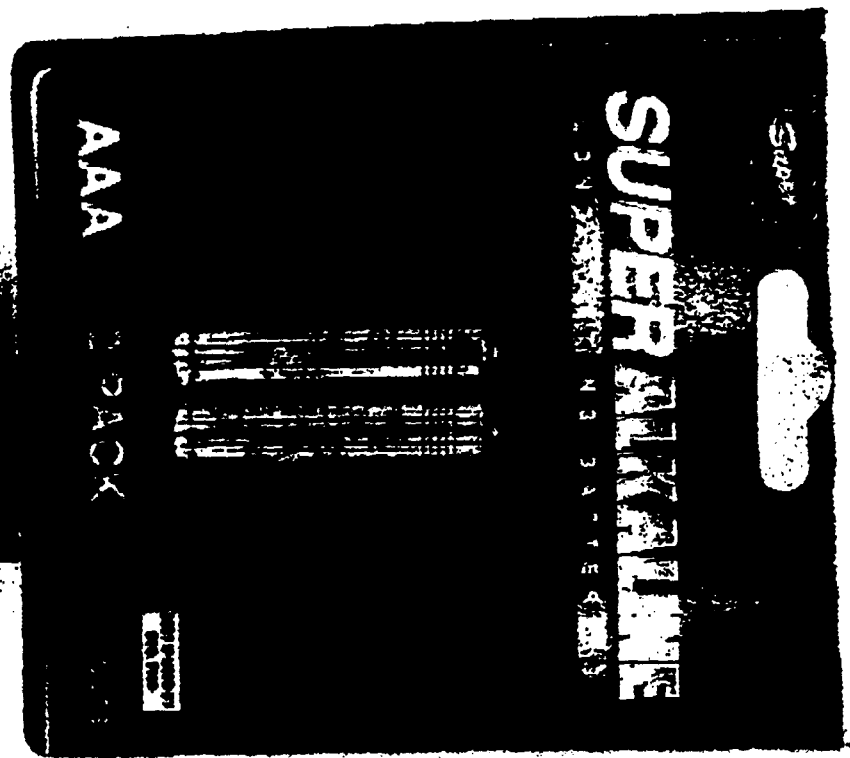
General Purpose Batteries

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Created by

EVER
graphica institute



ENERGY
PLUS



SUPER ALKALINE

3 0 0 3 4 3 7 3 3 4 1 1 3 3 3



WARNING

To reduce the risk of battery explosion and leakage, resulting in injury or damage, take the following precautions.

- Do not dispose of batteries in a fire.
- Do not attempt to recharge batteries.
- Do not mix with a different battery type.
- Do not insert batteries backwards into the battery compartment.
- Do not attempt to disassemble a battery.
- Do not store in direct sunlight or in an area of excessive heat.
- Keep out of the reach of children.

UPC

MADE IN INDONESIA

Manufactured by:
Atico International USA, Inc.
P.O. Box 1000, Ft. Lauderdale, FL 33301

TM Trademark of Atico International USA, Inc.
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Re: Applicant: Atico International USA, Inc.
Mark: SUPER ALKALINE
Serial No.: 76/045,182
Filed: May 10, 2000
Our Reference No.: ATI-4.2.009/3402

Dear Sir:

In connection with the above-identified Mark, enclosed please find:

1. An original (signed) and two (2) copies of Applicant's Appeal Brief; and
2. Acknowledgment Postcard.

Respectfully submitted,


Clyde A. Shuman

Enclosures

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DD